

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Bair et al.

Application No.: 09/954,719

Confirmation No.: 7605

Filed: September 17, 2001

Art Unit: 2162

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Examiner: J. B. Fleurantin

**PETITION UNDER 37 CFR § 1.181**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants petition the Director to (a) issue a Notice of Allowance and (b) refund fees paid in connection with applicants' Notice of Appeal filed on September 20, 2007.

In an Office Action mailed on March 20, 2007, the Examiner indicated that claims 1-5, 27-35, and 50 are "allowed over the prior art of record." (Final Office Action of March 20, 2007, Page 4.) Applicants note that although the Office Action Summary accompanying that Office Action indicates that these claims are rejected, the Office Action Summary appears to be incorrect because the Examiner explained why these claims are allowable in his remarks (Final Office Action, Page 4), and also previously indicated that these claims are allowable in the first Office Action.

To expedite allowance, applicants filed an amendment after Final on May 31, 2007, that canceled the rejected claims, intending to pursue those claims in a continuation application. In an Advisory Action mailed on May 31, 2007, the Examiner indicated that

applicants' "arguments filed on 05/21/2007, with respect to the pending claims 1-5, 27-35 and 50 have been fully considered and (sic, are) persuasive. Therefore, the 35 U.S. (sic) 103(a) rejection to the claims has been withdrawn. A response will shortly follow."

It is unclear which rejections were withdrawn. Applicants canceled the rejected claims and the remaining claims were "allowed." Consequently, there are no other claims whose rejections can be withdrawn.

Applicants' representative and the Examiner spoke or exchanged voice messages on August 17, August 27, August 28, August 29, September 6, September 12, and September 13, 2007, to determine the status of the response that the Examiner wrote would follow. During those oral exchanges, the Examiner indicated that he would send the response prior to the six-month statutory deadline (September 20, 2007) after the Final Office Action. Despite these assurances, the Examiner sent no response and took no further action.

During a telephone interview on September 20, 2007, the Examiner informed the undersigned that to allow the application, he now requires the applicants to rewrite claim 5 in independent form and to cancel claim 1. He also indicated that he desires to restrict claim 27 and its dependent claims. Applicants did not understand why the Examiner was making such a request at the eleventh hour. To prevent abandonment of the application, applicants timely filed a Notice of Appeal on September 20, 2007, and paid extension of time fees.

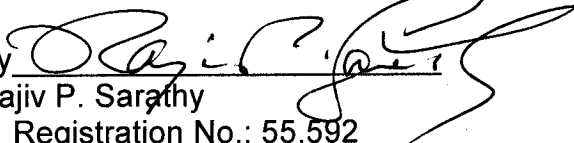
Based upon all existing written communications from the Examiner, it is applicants' understanding that they have placed the application in condition for allowance. Accordingly, applicants request the Director to (a) grant this Petition; (b) issue a Notice of Allowance; and (c) refund fees they paid with their Notice of Appeal, which was filed to prevent the application from being abandoned. Applicants note that no appeal from the

Examiner's actions is presently possible as the written record contains no outstanding rejections.

Applicants do not believe a fee is due with this Petition. However, if a fee is due, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-0665, under Order No. 577288027US1.

Dated: Sep. 24, 2007

Respectfully submitted,

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